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FILED

08 FEB 11 PM 3:43

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *CP* DEPUTY

Attorneys for Plaintiff JOHN BROCKMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 JOHN BROCKMAN, an individual

12 Plaintiff,

13 vs.

14 BEST OVERNITE EXPRESS, INC., A
15 CALIFORNIA CORPORATION; and DOES 1
16 through 10, inclusive,

17 Defendants.

Case No. 08 CV 0257 LAB JMA

COMPLAINT FOR UNPAID OVERTIME
UNDER CALIFORNIA LABOR CODE,
MEAL BREAKS, WAITING TIME
PENALTIES, OVERTIME UNDER THE
FLSA, AND UNFAIR BUSINESS
PRACTICES

DEMAND FOR JURY TRIAL

18 Plaintiff, JOHN BROCKMAN, alleges:

19 JURISDICTION

20 1. This Court has jurisdiction over this matter because this complaint alleges a federal
21 question in that violations of 29 U.S.C. §201 et seq. are alleged

22 GENERAL ALLEGATIONS

23
24 2. This Court is the proper court and this action is properly filed in the County of San
25 Diego and in this judicial district because Defendants do business in the County of San Diego, and
26 because Defendants' obligations and liabilities arise therein, and because the work that was
27 performed by Plaintiff in the County of San Diego is the subject of this action. Venue as to each
28 defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395.

3. The true names and capacities of DOES 1 through 10 are unknown to Plaintiff, who therefore sues the DOE Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained. Plaintiff is informed and believes, and hereon alleges, that some such Doe defendants are residents of California.

4. Plaintiff is informed and believes that Defendants, each and all of them, at all times material hereto, were the joint employers, parent companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries, representatives, and/or conspirators of each of the remaining Defendants. The Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within the course and scope of said relationship, and are a proximate cause of Plaintiff's damages as herein alleged.

PARTIES

5. Plaintiff JOHN BROCKMAN ("BROCKMAN") was jointly employed by Defendants from 8/30/2004 through October 31, 2007.

6. Defendant, BEST OVERNITE EXPRESS, INC. ("BOE") is a California corporation doing business in the County of San Diego, State of California.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION UNDER CALIFORNIA INDUSTRIAL WELFARE COMMISSION ORDERS AND CALIFORNIA LABOR CODE (AGAINST BOE and DOES 1-5)

7. Plaintiff refers to and incorporates by reference Paragraphs 1 through 6.

8. This cause of action is brought against BOE and DOES 1-5, jointly and individually.

9. Pursuant to Industrial Welfare Commission Order No. 9-2001, California Code of Regulations, Title 8, §11090, for the period of Plaintiffs' employment, Defendants were required to compensate Plaintiffs for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day of hours worked in excess of eight (8) on the seventh consecutive work day in a week.

10. Plaintiff BROCKMAN worked more than eight (8) hours in a single workday or forty (40) hours in a single workweek on numerous occasions.

11. Plaintiff BROCKMAN was a non-exempt employee and entitled to the above overtime premiums. Defendants failed to compensate Plaintiffs for all overtime premiums.

12. Plaintiff BROCKMAN worked at least one pay period in which he was not properly paid overtime within the three (3) years prior to the initiation of this lawsuit.

13. Defendants know or should know the actual dates of overtime worked, the amount of overtime worked, and the amount of unpaid overtime due.

14. As a proximate result of Defendants' violations, Plaintiff BROCKMAN has been damaged in an amount in excess of \$33,058 and subject to proof at time of trial.

15. Pursuant to Labor Code §§218.5, 218.6, 510, 1194 and California Code of Regulations, Title 8, §11090, Plaintiff BROCKMAN is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE ADEQUATE MEAL PERIODS UNDER
CALIFORNIA INDUSTRIAL WELFARE COMMISSION ORDERS**

AND CALIFORNIA LABOR CODE SECTION 512

(AGAINST BOE and DOES 1-5)

16. Plaintiff refers to and incorporates by reference Paragraphs 1 through 15.

17. This cause of action is brought against BOE and DOES 1-5, jointly and individually.

18. Pursuant to Industrial Welfare Commission Order No. 9-2001, California Code of Regulations, Title 8, §11090, for the period of Plaintiffs' employment, Defendants were required to provide a thirty (30) minute meal period for any person working more than five (5) hours in a day.

19. Defendants failed to provide Plaintiffs a meal period for numerous days worked.

20. Defendants know or should know the dates for each missed meal period as well as the damages due.

21. Defendants failed to provide Plaintiff at least one meal period within the three (3)

1 years prior to filing this lawsuit.

2 22. Pursuant to Labor Code §512 and California Code of Regulations, Title 8, §11090,
3 Plaintiff BROCKMAN is entitled to recover one (1) hour of pay at the regular rate of compensation
4 for each workday that the meal period was not provided.

5 23. Plaintiff BROCKMAN prays for damages for missed meals in an amount subject to
6 proof at time of trial.

7 **THIRD CAUSE OF ACTION**

8 **WAITING TIME PENALTIES UNDER LABOR CODE SECTION 203**

9 **(AGAINST BOE and DOES 1-5)**

10 24. Plaintiff refers to and incorporates by reference Paragraphs 1 through 23.

11 25. This cause of action is brought against BOE and DOES 1-5, jointly and individually.

12 26. Plaintiff's employment with Defendants was terminated on October 31, 2007.

13 27. Defendants willfully refused and continues to refuse to pay Plaintiff BROCKMAN
14 unpaid wages as required by Labor Code §203. Defendants know that the pay is due and are
15 refusing to pay it.

16 28. Plaintiff BROCKMAN requests damages and penalties as provided by Labor Code
17 §203 in the amount of \$4,800, and subject to proof at time of trial.

18 **FOURTH CAUSE OF ACTION**

19 **OVERTIME PAY AND LIQUIDATED DAMAGES UNDER 29 U.S.C. §207 and §216**

20 **(AGAINST ALL DEFENDANTS)**

21 29. Plaintiff refers to and incorporates by reference Paragraphs 1 through 28.

22 30. This cause of action is against all Defendants, jointly and individually.

23 31. Plaintiff is informed and believes and hereon alleges that Defendants are subject to
24 the provisions of the Fair Labor Standards Act. Under 29 U.S.C. §207(a) and §216(b), Plaintiff is
25 entitled to overtime pay at a rate of one and one-half (1 ½) times the regular rate of pay for hours
26 worked in excess of forty (40) hours in a week and an equal additional amount as liquidated
27 damages, as well as costs and attorney's fees.

28 32. Plaintiff worked numerous weeks in excess of forty (40) hours.

33. Plaintiff was a non-exempt employee and entitled to the above overtime premiums. Defendants failed to compensate Plaintiff for any overtime premiums.

34. This court has jurisdiction over this cause of action because the federal statute specifically grants the employee the right to bring the action in "any Federal or State court of competent jurisdiction." 29 U.S.C. §216(b).

35. Plaintiff worked at least one week in which proper overtime premiums were not paid by Defendants under the Fair Labor Standards Act within the two (2) years prior to initiating this lawsuit.

36. Defendant BOE was the employer of Plaintiff, as the term "employer" is defined in the Fair Labor Standards Act.

37. DOES 1-10 were the employer of Plaintiff, as the term "employer" is defined in the Fair Labor Standards Act.

38. Defendants' violations of 29 U.S.C. §207 were willful and intentional.

39. Plaintiff prays for judgment for overtime pay of \$33,058. This amount is subsumed by the overtime pay claimed in the First Cause of Action.

40. Plaintiff prays for judgment for liquidated damages in the amount of \$33,058. This amount is supplemental to the relief requested in all other causes of action.

41. Plaintiff prays for costs and attorney's fees.

FIFTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS

CODE SECTION 17200

(AGAINST BOE and DOES 1-5)

42. Plaintiff refers to and incorporates by reference Paragraphs 1 through 41.

43. This cause of action is brought against BOE and DOES 1-5, jointly and individually.

44. By failing to pay overtime premiums, Defendants' acts constitute unfair and unlawful business practices under Business and Professions Code §17200, et. seq.

45. By failing to provided adequate meal breaks, Defendants' acts constitute unfair and unlawful business practices under Business and Professions Code §17200, et. seq.

1 46. Plaintiff BROCKMAN prays for restitution under this Cause of Action in an amount
2 subject to proof at time of trial.

3
4 WHEREFORE, Plaintiff prays for the following relief:

- 5 1. Damages for overtime not paid to Plaintiff BROCKMAN in an amount in excess of
6 \$33,058 and subject to proof at trial.
- 7 2. Damages for meal premiums not paid to Plaintiff BROCKMAN and class members
8 in an amount subject to proof at trial.
- 9 3. For penalties and damages pursuant to Labor Code § 203 for Plaintiff BROCKMAN
10 in an amount of \$4,800, and subject to proof at trial.
- 11 4. For restitution and disgorgement for all unfair business practices against Plaintiff
12 BROCKMAN and class members in an amount subject to proof at trial.
- 13 5. For prejudgment and post judgment interest.
- 14 6. Cost of suit.
- 15 7. Attorneys' fees.
- 16 8. For such other and further relief as the court may deem proper.

17
18 DATED: February 7, 2008

LAW OFFICES OF MICHAEL TRACY

19
20 By: 

MICHAEL TRACY, Attorney for Plaintiff
JOHN BROCKMAN

21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs demand a jury trial.

24 DATED: February 7, 2008

LAW OFFICES OF MICHAEL TRACY

25
26 By: 

MICHAEL TRACY, Attorney for Plaintiff
JOHN BROCKMAN

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147497 - BH
*** * C O P Y * ***
February 11, 2008
15:39:57

Civ Fil Non-Pris
USAO #: 08CV0257 CIVIL FILING
Judge...: LARRY A BURNS
Amount.: \$350.00 CK
Check#: BC# 1460

Total-> \$350.00

FROM: BROCKMAN V. BEST OVERNITE EXP.
CIVIL FILING

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOHN BROCKMAN

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

L/O OF MICHAEL TRACY, 2030 MAIN STREET, SUITE 1300
IRVINE, CA 92614

DEFENDANTS

BEST OVERNITE EXPRESS, INC. et al.

County of Residence of First Listed Defendant SAN DIEGO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

d.y.

DEPUTY

'08 CV 0257 LAB JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF ☒ 1 DEF ☒ 1 Incorporated or Principal Place of Business In This State PTF ☐ 4 DEF ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC SECTION 201

VI. CAUSE OF ACTION

Brief description of cause:
EMPLOYMENT VIOLATIONS

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/08/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

147497

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE